

MINUTES

CITY COUNCIL AD HOC COMMITTEE TO REVIEW THE BOARD OF ETHICS OPINION #20 THURSDAY, JANUARY 20, 1994 - 3:00 P.M. TENTH FLOOR CONFERENCE ROOM LANSING CITY HALL

CALL TO ORDER:

The meeting was called to order at approximately 3:00 P.M., by Chairperson Rick Lilly.

ROLL CALL:

**Councilmember Rick Lilly, Chairperson
Councilmember Ellen Beal, Vice-Chairperson
Councilmember Sandy Allen, Member**

GUESTS/STAFF:

**George Brookover, Attorney
Lloyd Teets, Citizen
Tim Makinen, Lansing State Journal
Francesca Knot, City Council Staff
Harold Leeman, Jr., Citizen
John F. Mertz, Board of Ethics**

PUBLIC COMMENT:

None.

APPROVAL OF MINUTES

Councilmember Beal moved approval of the October 27, 1993 minutes as presented. Chairperson Lilly confirmed

that the minutes correctly reflected the actions and discussions that took place during the October 27, meeting. The other members who served on the Committee in 1993 are no longer serving on the City Council. Councilmember Allen supported the motion and the minutes were approved as submitted. 3-0.

STATUS REPORT FROM MR. GEORGE BROOKOVER:

The Committee discussed the status of the investigation by Mr. Brookover.

Mr. Brookover provided a verbal status report to the Committee. He is still awaiting receipt of several transcripts, and City Council minutes, and Ethics Board minutes. Upon the receipt of the requested materials and documents Mr. Brookover stated that he would provide a report to the City Council sometime in late March or early April.

Mr. Brookover asked for clarification from the Committee as to the process to be used for him to make his report. Due to the fact that some discussions may be of a confidential nature, he informed the Committee that these discussions may have to take place in a closed session.

Councilmember Beal advised Mr. Brookover that in order to conduct a closed session, Mr. Brookover would have to submit his report and/or opinion in writing, requesting that it be discussed in a non-public forum.

Mr. Brookover inquired as to what entity would make the determination and or recommendation to enter a closed session. Chairperson Lilly clarified that the Ad Hoc Committee on Ethics would make a recommendation to the Committee of the Whole to enter into a closed session if the Ad Hoc Committee determines that this action is necessary.

Chairperson Lilly informed Mr. Brookover that in terms of public inquiries relative to Mr. Brookover's activities and billing statements, per Mr. McWilliams, Deputy City Attorney, it was not necessary to keep this information confidential.

The Committee members brought Councilmember Allen up to date as to the status of this entire matter and the previous involvement of the Ad Hoc Committee on Ethics.

Chairperson Lilly advised the Committee of the position taken by the Committee in 1993 regarding the minority report submitted to the Council by Mr. Stu Dunning, temporary member of the Ethics Board. The Ad Hoc Committee took affirmative action to only deal with the Ethics Board Opinion #20 and that the Committee would not consider Mr. Dunning's minority report and that Mr. Brookover not consider this document while serving as Special Counsel to the City Council.

Ethics Board Recommendations 2, 3 and 4 are being investigated by the Ingham County Prosecutor, Don Martin.

The Committee specifically asked Mr. Brookover to provide recommendations relative to:

- The distribution of all legal opinions, which the previous policy has been changed by Councilmember Brockwell, that in the future all legal opinions requested by an individual Councilmember will be distributed to the Mayor and all Councilmembers; and any opinions requested by the Mayor will be provided to all Councilmembers.
- Review and determination as to whether the City Charter was violated and should the City Attorney have warned Councilmembers ahead of time that they may have been getting into "hot

water." Newly appointed City Attorney Smiertka committed that he will advise Council prior to any action taken by the Council.

- A review of closed sessions - whether this plan was truly part of the negotiation/bargaining process.

The Committee dealt with the matter of making sure the public was informed relative to Council agenda matters. Additional packets are being copied to accommodate members of the public.

A new Ethics ordinance will be drafted either by creating a special committee or by the members of the Ethics Board.

Chairperson Lilly stated that Mr. Brookover was to look at the serious charges made by the Ethics Board regarding the alleged conduct of City Attorney's Office and Mr. Brookover was also to provide advice as to the legality of the case.

Mr. Lilly distributed copies of the Opens Meetings Act including amendments.

PUBLIC COMMENT:

Mr. Mertz addressed the Committee regarding the matter of the transcripts as being prepared by Court Recorder Elaine Stocking. He stated that he did not see why the entire dialogue of the Ethics Board meetings were being transcribed and expressed his concern as to how transcribing the entire meeting and questioned the necessity of providing these documents to Mr. Brookover in relation to whether it was legally germane to Mr. Brookover's role in this entire early retirement process.

Mr. Brookover had requested transcripts of the entire meeting tapes. Mr. Martin had requested transcripts of

the interviews only. In order to prevent duplication of services and payments to Ms. Stocking, Council President of 1993, Mark Canady directed Ms. Stocking to transcribe the entire meeting which would alleviate the costs of paying for two separate transcripts.

Mr. Mertz spoke to the issue of whether the payments have been legally paid to the retirees based on the fact that the plan was adopted by resolution and not by ordinance. He also questioned the fact of whether elected officials were legally eligible as the resolution was drafted and approved by City Council.

Mr. Mertz stated that he was denied access to the records that dealt with the tie bar issue in terms of elected officials being tie barred and the Administrative process used to put this order in effect. He stated that he was denied access to these files from the Mayor and City Attorney.

Chairperson Lilly stated that the previous Administrations - Finance and Personnel Departments implemented practices such as the tie bar and the compensatory time. Councilmember Lilly inquired as to how Elected Officials could be classified as "employees."

Mr. Mertz informed the Committee that the Board was unable to establish that a tie bar was adopted by City Council and the original copy of the personnel rules were not "stamped."

[Mr. Brookover exits]

ETHICS ORDINANCE REWRITE:

Chairperson Lilly was of the opinion that the ordinance must be proposed with clear penalties listed for certain ethics violations.

The Committee discussed the options of appointing an Ad Hoc Committee made up of concerned citizens and/or

proposing that the Ethics Board work on the re-write of a model ordinance.

Councilmember Allen exits.

Mr. Mertz stated that if an Ad Hoc Committee was established he requested that his Vice-Chair, Mr. Don Cook, serve on the Committee; but that he preferred the option of the Ethics Board working in conjunction with the City Attorney to rewrite the existing ordinance. Mr. Mertz continued on to say that the Board had been working on a new draft of the ordinance but that they just did receive the support that was necessary by the Administration to make this issue a higher priority within the Administration.

Councilmember Beal moved that the Ad Hoc Committee recommend to the Committee of the Whole that the City Attorney work in conjunction with the Ethics Board to re-write the existing ordinance and that the Board of Ethics report back to the Ad Hoc Committee on Ethics within 60 days of the passage of the resolution. The motion carried 2-0. Councilmember Allen was out of the room at the time of the vote. Chair will report to the Committee of the Whole. (Committee Report)

Mr. Leeman inquired as to whether the Ethics Board membership could be expanded and Chairperson Lilly responded that the expansion would require a Charter amendment which would be by the vote of the Lansing residents.

Mr. Mertz again spoke to the issue of the transcripts and requested that a directive be given to the Court Recorder to only transcribe the interview portion of the meetings. Mr. Mertz expressed his opinion that the entire meeting transcripts were not necessary for Mr. Brookover and would not pertain to the case law Mr. Brookover was dealing with in regard to the resolution versus ordinance issue and as to whether this plan was legally offered to

elected officials. Chairperson Lilly stated that he would contact Mr. Brookover, personally and discuss this important matter with him.

ADJOURN:

The meeting adjourned at approximately 4:06 p.m.

Prepared by Francesca Knot
Senior Legislative Assistant

Approved by Committee 2/8/94

SIGNED *Rick Lilly*
RICK LILLY, CHAIRPERSON

Appropriate documents attached